IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

THOMAS WHATLEY III,	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 4:14-CV-00710-ALM**
	)	
COMMONWEALTH FINANCIAL SYSTEMS, INC. *d/b/a* NCC, and PENDRICK CAPITAL PARTNERS, LLC,	)	
	)	
Defendants.	)	

DEFENDANT, PENDRICK CAPITAL PARTNERS, LLC'S, ANSWER AND AFFIRMATIVE DEFENSES

Defendant, Pendrick Capital Partners, LLC (Pendrick), through counsel and under the Federal Rules of Civil Procedure, submits this Answer and Affirmative Defenses to the Complaint filed by plaintiff, Thomas Whatley III (plaintiff), and states:

NATURE OF ACTION

1. Pendrick admits plaintiff purports to bring this action for alleged violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq*., the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, *et seq*., and TEX. BUS. & COM. CODE § 305.053, but denies any violations, liability or wrongdoing under the law. Except as specifically admitted, Pendrick denies the allegations in ¶ 1.

JURISDICTION AND VENUE

2. Upon information and belief, Pendrick admits this Court has jurisdiction. Except as specifically admitted, Pendrick denies the allegations in ¶ 2.

3. Upon information and belief, Pendrick admits venue is proper. Except as specifically admitted, Pendrick denies the allegations in ¶ 3.

PARTIES

4. Upon information and belief, Pendrick admits the allegations in ¶ 4.

5. Pendrick denies the allegations in ¶ 5 as calling for a legal conclusion.

6. The allegations in ¶ 6 are not directed at Pendrick. To the extent a response is required, denied.

7. The allegations in ¶ 7 are not directed at Pendrick. To the extent a response is required, denied.

8. Pendrick admits it acquired an account in plaintiff's name and placed the account with NCC for collection. Except as specifically admitted, Pendrick denies the allegations in ¶ 8.

9. Pendrick denies the allegations in ¶ 9 as calling for a legal conclusion.

FACTUAL ALLEGATIONS

10. Pendrick admits it acquired an account in plaintiff's name and placed the account with NCC for collection. Except as specifically admitted, Pendrick denies the allegations in ¶ 10.

11. Pendrick admits it acquired an account in plaintiff's name stemming from plaintiff's past due medical expenses. Except as specifically admitted, Pendrick denies the allegations in ¶ 11.

12. Pendrick denies the allegations in ¶ 12 for lack of knowledge or information sufficient to form a belief therein.

13. Pendrick admits it purchases debts. Except as specifically admitted, Pendrick denies the allegations in ¶ 13.

14. Pendrick admits it purchased an account in plaintiff's name. Except as specifically admitted, Pendrick denies the allegations in ¶ 14.

15. Pendrick admits it placed plaintiff's account with NCC for collection. Except as specifically admitted, Pendrick denies the allegations in ¶ 15.

16. Pendrick denies the allegations in ¶ 16 for lack of knowledge or information sufficient to form a belief therein.

17. Pendrick denies the allegations in ¶ 17 for lack of knowledge or information sufficient to form a belief therein.

18. Pendrick denies the allegations in ¶ 18 for lack of knowledge or information sufficient to form a belief therein.

19. Pendrick denies the allegations in ¶ 19 for lack of knowledge or information sufficient to form a belief therein.

20. Pendrick denies the allegations in ¶ 20 for lack of knowledge or information sufficient to form a belief therein.

21. Pendrick denies the allegations in ¶ 21 for lack of knowledge or information sufficient to form a belief therein.

22. Pendrick denies the allegations in ¶ 22 for lack of knowledge or information sufficient to form a belief therein.

23. Pendrick denies the allegations in ¶ 23 for lack of knowledge or information sufficient to form a belief therein.

24. Pendrick denies the allegations in ¶ 24 for lack of knowledge or information sufficient to form a belief therein.

25. Pendrick denies the allegations in ¶ 25 for lack of knowledge or information sufficient to form a belief therein.

26. Pendrick denies the allegations in ¶ 26 for lack of knowledge or information sufficient to form a belief therein.

27. Pendrick denies the allegations in ¶ 27 for lack of knowledge or information sufficient to form a belief therein.

28. Pendrick denies the allegations in ¶ 28 for lack of knowledge or information sufficient to form a belief therein.

29. Pendrick denies the allegations in ¶ 28 for lack of knowledge or information sufficient to form a belief therein.

30. Pendrick denies the allegations in ¶ 30 for lack of knowledge or information sufficient to form a belief therein.

31. Pendrick denies the allegations in ¶ 31 for lack of knowledge or information sufficient to form a belief therein.

32. Pendrick denies the allegations in ¶ 32 for lack of knowledge or information sufficient to form a belief therein.

33. Pendrick denies the allegations in ¶ 33 for lack of knowledge or information sufficient to form a belief therein.

34. Pendrick denies the allegations in ¶ 34 for lack of knowledge or information sufficient to form a belief therein.

35. Pendrick denies the allegations in ¶ 35 for lack of knowledge or information sufficient to form a belief therein.

36. Pendrick denies the allegations in ¶ 36 for lack of knowledge or information sufficient to form a belief therein.

37. Pendrick denies the allegations in ¶ 37 for lack of knowledge or information sufficient to form a belief therein.

38. Pendrick denies the allegations in ¶ 38.

39. Pendrick denies the allegations in ¶ 39 for lack of knowledge or information sufficient to form a belief therein.

40. Pendrick denies the allegations in ¶ 40 for lack of knowledge or information sufficient to form a belief therein.

41. Pendrick denies the allegations in ¶ 41 for lack of knowledge or information sufficient to form a belief therein.

42. Pendrick denies the allegations in ¶ 42 for lack of knowledge or information sufficient to form a belief therein.

43. Pendrick denies the allegations in ¶ 43 for lack of knowledge or information sufficient to form a belief therein.

44. Pendrick denies the allegations in ¶ 44 for lack of knowledge or information sufficient to form a belief therein.

45. Pendrick denies the allegations in ¶ 45 for lack of knowledge or information sufficient to form a belief therein.

46. Pendrick denies the allegations in ¶ 46.

COUNT I
VIOLATION OF 15 § 1692d
NCC

47. Pendrick reasserts the foregoing as if fully set forth herein.

48. Pendrick denies the allegations in ¶ 48.

COUNT II
VIOLATION OF 15 U.S.C. § 1692d(6)
NCC

49. Pendrick reasserts the foregoing as if fully set forth herein.

50. Pendrick denies the allegations in ¶ 50.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(11)
NCC

51. Pendrick reasserts the foregoing as if fully set forth herein.

52. Pendrick denies the allegations in ¶ 52.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692g(a)
NCC

53. Pendrick reasserts the foregoing as if fully set forth herein.

54. Pendrick denies the allegations in ¶ 54.

COUNT V
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)
NCC

55. Pendrick reasserts the foregoing as if fully set forth herein.

56. Pendrick denies the allegations in ¶ 56.

COUNT VI
TEX. BUS. & COM. CODE § 305.053
NCC

57. Pendrick reasserts the foregoing as if fully set forth herein.

58. Pendrick denies the allegations in ¶ 58.

COUNT VII
VIOLATION OF 15 U.S.C. § 1692d
PENDRICK

59. Pendrick reasserts the foregoing as if fully set forth herein.

60. Pendrick denies the allegations in ¶ 60.

61. Pendrick denies the allegations in ¶ 61.

COUNT VIII
VIOLATION OF 15 U.S.C. § 1692d(6)
PENDRICK

62. Pendrick reasserts the foregoing as if fully set forth herein.

63. Pendrick denies the allegations in ¶ 63.

64. Pendrick denies the allegations in ¶ 64.

COUNT IX
VIOLATION OF 15 U.S.C. § 1692e(11)
PENDRICK

65. Pendrick reasserts the foregoing as if fully set forth herein.

66. Pendrick denies the allegations in ¶ 66.

67. Pendrick denies the allegations in ¶ 67.

COUNT X
VIOLATION OF 15 U.S.C. § 1692g(a)
PENDRICK

68. Pendrick reasserts the foregoing as if fully set forth herein.

69. Pendrick denies the allegations in ¶ 69.

70. Pendrick denies the allegations in ¶ 70.

COUNT XI
VIOLATION OF 47 U.S.C. § 227(b)(1)(A)(iii)
PENDRICK

71. Pendrick reasserts the foregoing as if fully set forth herein

72. Pendrick denies the allegations in ¶ 72.

73. Pendrick denies the allegations in ¶ 73.

COUNT XII
TEX. BUS. & COM. CODE § 305.053
PENDRICK

74. Pendrick reasserts the foregoing as if fully set forth herein.

75. Pendrick denies the allegations in ¶ 75.

76. Pendrick denies the allegations in ¶ 76.

TRIAL BY JURY

77. Pendrick admits plaintiff has requested a trial by jury. Except as specifically admitted, Pendrick denies the allegations in ¶ 77.

PENDRICK'S AFFIRMATIVE DEFENSES

1. To the extent any violations are established, any such violations were not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

2. Pendrick denies any liability; however, regardless of liability, plaintiff has suffered no actual damages as a result of Pendrick's purported violations.

3. One or more claims asserted by plaintiff are barred by the statute of limitations, laches, estoppel, wavier and/or unclean hands.

4. Assuming plaintiff suffered any damages, he has failed to mitigate his damages or take other reasonable steps to avoid or reduce his damages.

5. Any harm suffered by plaintiff was legally and proximately caused by persons or entities other than Pendrick and were beyond the control or supervision of Pendrick or for whom Pendrick was and is not responsible or liable.

6. Plaintiff has failed to state a claim against Pendrick upon which relief may be granted.

7. One or more of the telephone calls made to plaintiff were not made to a wireless, *i.e.*, cellular, telephone.

8. Plaintiff consented and authorized calls to the phone number in question.

9. The phone calls made to plaintiff are exempt from TCPA liability under 47 U.S.C. § 227(b)(1)(B), 47 U.S.C. § 227(b)(2)(b) and 47 C.F.R. § 64.1200(a).

10. The equipment used to make the telephone calls at issue is not covered by or subject to the TCPA.

11. To the extent the calls at issue were to plaintiff's cellular telephone, as alleged, plaintiff provided consent to receive those calls.

12. To the extent plaintiff was not the intended recipient of the calls, plaintiff has no standing to assert the claim.

13. Plaintiff acquiesced in and/or consented to the acts and omissions alleged in the Complaint.

WHEREFORE, Defendant, Pendrick Capital Partners, LLC, requests the Court dismiss this action with prejudice and grant it any other relief that the Court deems appropriate.

Respectfully submitted,

/s/ Whitney L. White
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Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2015, a copy of the foregoing **Defendant, Pendrick Capital Partners, LLC's, Answer and Affirmative Defenses** was electronically filed with the Clerk of the Court, United States District Court for the Eastern District of Texas and served via CM/ECF upon the following:

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